

STATE OF MICHIGAN
COURT OF APPEALS

LORRAINE D. BURROWS,

Plaintiff-Appellant,

v

SCHUIL COFFEE COMPANY and GARRY
SCHUIL,

Defendants-Appellees.

UNPUBLISHED
November 4, 2003

No. 240681
Wayne Circuit Court
LC No. 01-110679-NZ

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

HOEKSTRA, J., (*dissenting*).

I respectfully dissent.

In this case, plaintiff filed a complaint on March 29, 2001, alleging that she was owed unpaid sales commissions arising from an agreement with defendants. In response, defendants filed a motion for summary disposition under MCR 2.116(C)(7), claiming that the statute of limitations, MCL 600.5807(8), barred plaintiff's complaint because six years had elapsed between the time plaintiff's action accrued and the filing of the complaint.

It is indisputable that before March 1995, or more than six years before the filing of her complaint, plaintiff knew that defendants repudiated the agreement and stopped paying commissions on the account. Further, the parties agree that the six-year limitation period of MCL 600.5807(8) governs this case. Under these circumstances, I would hold that plaintiff's cause of action accrued upon her being informed that the commission agreement was terminated. Because that event occurred more than six years before plaintiff filed her complaint, this action is barred.

Unlike the majority, I do not believe that plaintiff's claim for commissions does not accrue until payments come due and are not paid. If defendants lawfully ended the agreement with plaintiff, plaintiff did not earn any additional commissions and is entitled to no further compensation. If, on the other hand, defendants' repudiation was unlawful, the commissions claimed by plaintiff form the basis for assessing damages. Either way, plaintiff's claim is determined by judging the validity of defendants' act of repudiating the agreement and ending the payment of commissions. Because plaintiff's complaint was filed more than six years after that event, I would affirm the trial court's grant of summary disposition in favor of defendants.

Finally, I find the case on which the majority relies, *H J Tucker & Assoc Inc v Allied Chucker and Engineering Co*, 234 Mich App 550; 595 NW2d 176 (1999), distinguishable from the instant case. In *Tucker*, the parties did not dispute the existence of an agreement to pay sales commission. Rather, the issue was to which sales the contract applied or, if a commission was due, the percentage to which plaintiff was entitled. *Id.* at 555. Here, the issue is whether an enforceable agreement exists.

/s/ Joel P. Hoekstra